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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

SAN LUIS OBISPO COASTKEEPER,  
LOS PADRES FORESTWATCH,  
CALIFORNIA COASTKEEPER  
ALLIANCE, and THE ECOLOGICAL  
RIGHTS FOUNDATION,

Plaintiffs,

vs.

COUNTY OF SAN LUIS OBISPO,

Defendant.

Case No: 2:24-cv-06854 SPG (ASx)

**DEFENDANT COUNTY OF SAN  
LUIS OBISPO'S FIRST AMENDED  
ANSWER TO PLAINTIFFS'  
COMPLAINT**

Date Action Filed: August 13, 2024  
Date Answer Filed: October 15, 2024

1 Defendant County of San Luis Obispo (“County”), by and through its  
2 undersigned counsel, submits the following Amended Answer to the Plaintiffs’  
3 Complaint for Declaratory and Injunctive Relief (“Complaint”) (Doc. No. 1).

4 The paragraph numbers, headings, and subheadings in this Amended Answer  
5 correspond to the paragraph numbers, headings, and subheadings in Plaintiffs’  
6 Complaint. The paragraph numbers, headings, and subheadings in this Amended  
7 Answer are neither admissions nor denials of any allegations contained therein;  
8 rather, the paragraph numbers, headings, and subheadings in this Amended Answer  
9 are merely intended to assist the reader in matching portions of this Amended  
10 Answer to the corresponding portions of the Complaint.

### 11 INTRODUCTION

12 1. The County denies every allegation in the first sentence of paragraph 1,  
13 except that the County admits that Plaintiffs have filed suit against the County and  
14 included an Endangered Species Act (“ESA”) claim relating to Steelhead in the  
15 Complaint. The County admits in the second sentence of paragraph 1 only that it or  
16 the San Luis Obispo Flood Control and Water Conservation District (“District”)  
17 operates and maintains Lopez Dam, a three-mile buried steel transmission line that  
18 conveys water to Lopez Terminal Reservoir, and the Lopez Water Treatment Plant.  
19 The County denies it operates and maintains certain unidentified “various in-stream  
20 infrastructure downstream from Lopez Dam.” On this basis, the County further  
21 denies all allegations contained in the Complaint that refer to “the Project” as  
22 Plaintiffs define it in paragraph 1. The County denies all remaining allegations in  
23 Paragraph 1.

24 2. The County denies each and every allegation in paragraph 2, except that  
25 the County admits that: the Lopez Dam is a barrier to Steelhead migration to the  
26 extent that Steelhead would migrate further up Arroyo Grande Creek but are  
27 precluded from doing so owing to the Dam’s existence, the South-Central California  
28 Coast Steelhead (“Steelhead”) is a distinct population segment and is listed as

1 threatened under the Endangered Species Act (“ESA”), the California red-legged  
2 frog (“CRLF”) is listed as threatened under the ESA, the tidewater goby is listed as  
3 endangered under the ESA, the least Bell’s vireo (“Vireo”) is listed as endangered  
4 under the ESA, and the southwestern pond turtle is proposed for listing under the  
5 ESA.

6 3. The allegations in paragraph 3 contain legal conclusions to which no  
7 response is required. To the extent that a response is required, the County denies the  
8 allegations contained in paragraph 3, including that Plaintiffs are entitled to any of  
9 the relief which they seek.

10 4. The allegations contained in paragraph 4 contain legal conclusions to  
11 which no response is required. To the extent a response is required, the County  
12 admits only that Plaintiffs have included claims under California Fish and Game  
13 Code sections 5937 and 5901, the California public trust doctrine, and article X,  
14 section 2 of the California constitution in the Complaint. The County denies each  
15 and every remaining allegation contained in paragraph 4.

16 5. The allegations in paragraph 5 are legal conclusions and/or Plaintiffs’  
17 demands for relief, to which no response from the County is required. To the extent  
18 a response is required, the County denies each and every allegation in paragraph 5,  
19 and specifically denies that Plaintiffs are entitled to any relief from the County in  
20 this action, including that which is enumerated in paragraph 5.

## 21 JURISDICTION

22 6. The County admits that this Court has jurisdiction over Plaintiffs’ ESA  
23 claim under 28 U.S.C. § 1331 to the extent the facilities in the Complaint were  
24 specifically identified in the 60-day Notice of Intent required under the ESA and the  
25 County is responsible for operating and/or maintaining the facilities. The remainder  
26 of Plaintiffs’ allegations are legal conclusions related to this Court’s jurisdiction, to  
27 which no response is required. To the extent a response is required, the County  
28 admits that to the extent that federal question jurisdiction exists and that Plaintiffs

1 have standing to pursue the claims, supplemental jurisdiction exists over the state  
2 law claims. The County denies the remainder of the allegations in paragraph 6.

3 7. The allegations in the first sentence of paragraph 7 are legal conclusions  
4 related to this Court's jurisdiction, to which no response by the County is required.  
5 To the extent a response is required, the County denies each and every allegation in  
6 paragraph 7, except the County admits Plaintiffs provided notice of intent to file suit  
7 under the ESA on June 6, 2024 to the County, that the notice of intent is attached as  
8 Exhibit A to Plaintiffs' Complaint, and that more than sixty days have passed since  
9 Plaintiffs' served this notice and neither the Secretary of Commerce nor the  
10 Secretary of the Interior has initiated any enforcement action against the County for  
11 alleged ESA violations. For the purposes of preserving its affirmative defenses, the  
12 County denies that Plaintiffs' June 6, 2024 notice of intent to file suit under the ESA  
13 was adequate under 16 U.S.C. § 1540(g)(2).

14 8. The allegations in paragraph 8 are legal conclusions relating to this  
15 Court's jurisdiction over Plaintiffs' state law claims, to which no response by the  
16 County is required. To the extent any response is required, the County denies each  
17 and every allegation in paragraph 8.

18 9. The County admits the allegations in paragraph 9.

19 10. The allegations in paragraph 10 are legal conclusions related to  
20 Plaintiffs' standing to bring this suit, to which no response by the County is required.  
21 To the extent any response is required, the County denies the allegations in the first  
22 sentence of paragraph 10. The County lacks information sufficient to form a belief  
23 as to the truth or accuracy of Plaintiffs' allegations in the second sentence of  
24 paragraph 10, and therefore denies the allegations. The County denies each and  
25 every remaining allegation in paragraph 10, and denies that Plaintiffs are entitled to  
26 any of the relief sought.

27 11. Paragraph 11 consists entirely of legal conclusions, and therefore no  
28 response by the County is required. To the extent any response is required, the

1 County denies each and every allegation in paragraph 11, and denies that Plaintiffs  
2 are entitled to any relief whatsoever.

3 **VENUE**

4 12. The allegations in the first two sentences of paragraph 12 consist  
5 entirely of legal conclusions related to venue, to which no response is required. To  
6 the extent any response is required, the County denies each and every allegation in  
7 the first two sentences of paragraph 12. With respect to the third sentence of  
8 paragraph 12, the County admits only that its offices are located in San Luis Obispo  
9 County. The County lacks sufficient information to form a belief as to the truth or  
10 accuracy of the remaining allegations in the third sentence of paragraph 12, and  
11 therefore denies the remaining allegations in that sentence.

12 **THE PARTIES**

13 **A. Plaintiffs**

14 13. The County lacks sufficient information to form a belief as to the truth  
15 or accuracy of the allegations in paragraph 13, and therefore denies them on that  
16 basis.

17 14. The County lacks sufficient information to form a belief as to the truth  
18 or accuracy of the allegations in paragraph 14, and therefore denies them on that  
19 basis.

20 15. The County lacks sufficient information to form a belief as to the truth  
21 or accuracy of the allegations in paragraph 15, and therefore denies them on that  
22 basis.

23 16. The County lacks sufficient information to form a belief as to the truth  
24 or accuracy of the allegations in paragraph 16, and therefore denies them on that  
25 basis.

26 17. The County denies all allegations in paragraph 17 that it has caused  
27 harm to any species. The County lacks sufficient information to form a belief as to  
28

1 the truth or accuracy of the remaining allegations in paragraph 17, and therefore  
2 denies them on that basis.

3 18. The County denies all allegations in paragraph 18 that it has caused  
4 harm to any species. The County lacks sufficient information to form a belief as to  
5 the truth or accuracy of the remaining allegations in the first two sentences in  
6 paragraph 18, and therefore denies them on that basis. To the extent that the  
7 allegations in the third sentence of paragraph 18 are legal conclusions, no response  
8 by the County is required. If any response is required, the County denies all  
9 allegations in the third sentence of paragraph 18. The County lacks sufficient  
10 information to form a belief as to the truth or accuracy of the allegations in the fourth  
11 sentence in paragraph 18, and therefore denies them on that basis. The County denies  
12 the allegations in the fifth sentence in paragraph 18 and denies that Plaintiffs are  
13 entitled to any relief whatsoever.

14 **B. Defendant**

15 19. The County admits the allegations in the first and third sentences of  
16 paragraph 19. The allegations in the second and fourth sentence in paragraph 19  
17 contain legal conclusions to which no response is required. To the extent that a  
18 response is required, the County denies the allegations contained in the second and  
19 fourth sentences in paragraph 19, except that it admits that it or the District operates  
20 and maintains Lopez Dam, a three-mile buried steel transmission line that conveys  
21 water to Lopez Terminal Reservoir, and the Lopez Water Treatment Plant, and that  
22 it is responsible for complying with the ESA to the extent it applies.

23 **LEGAL BACKGROUND**

24 **A. The Federal Endangered Species Act**

25 20. The allegations contained in the first sentence of paragraph 20 contain  
26 legal conclusions and 16 U.S.C. § 1531(b) is the best evidence of its contents.  
27 Therefore, no response by the County is required. To the extent a response is  
28 required, the County admits the first sentence of paragraph 20 only to the extent the

1 paragraph is consistent with the language of 16 U.S.C. § 1531(b). The remainder of  
2 paragraph 20 consists, in its entirety, of legal argument and citations, to which no  
3 response by the County is required. To the extent a response by the County is  
4 required, the County admits only that the quoted language in the third and fifth  
5 sentences of paragraph 20 appears in *Tennessee Valley Authority v. Hill*, 437 U.S.  
6 153 (1978).

7 21. The allegations in paragraph 21 and footnote 1 contain legal  
8 conclusions and 16 U.S.C. §§ 1532(5), (6), (20) and 1533(a)(1), (a)(3) contain the  
9 best evidence of their contents. Therefore, no response by the County is required. To  
10 the extent a response from the County is required, the County admits the allegations  
11 in paragraph 21 and footnote 1 only to the extent it is consistent with the language  
12 of 16 U.S.C. §§ 1532(5), (6), (20) and 1533(a)(1), (a)(3). The County denies all other  
13 allegations contained in paragraph 21.

14 22. The allegations in paragraph 22 contain legal conclusions and 16 U.S.C.  
15 § 1538(a)(1)(B) and 50 C.F.R. §§ 17.31, 223.203 contain the best evidence of their  
16 contents. Therefore, no response by the County is required. To the extent a response  
17 from the County is required, the County admits the allegations in paragraph 22 only  
18 to the extent it is consistent with the language of 16 U.S.C. § 1538(a)(1)(B) and 50  
19 C.F.R. §§ 17.31, 223.203. The County denies all other allegations contained in  
20 paragraph 22.

21 23. The allegations in paragraph 23 contain legal conclusions and 16 U.S.C.  
22 §§ 1532(13) and 1538(g) contain the best evidence of their contents. Therefore, no  
23 response by the County is required. To the extent a response from the County is  
24 required, the County admits the allegations in paragraph 23 only to the extent it is  
25 consistent with the language of 16 U.S.C. §§ 1532(13) and 1538(g). The County  
26 denies all other allegations contained in paragraph 23.

27 24. The allegations in the first two sentences of paragraph 24 contain legal  
28 conclusions and 16 U.S.C. § 1532(19) contains the best evidence of its contents.

1 Therefore, no response by the County is required. To the extent a response from the  
2 County is required, the County admits only that the quoted language in the first  
3 sentence of paragraph 24 appears in 16 U.S.C. § 1532(19). The allegations in the  
4 third and fourth sentences consist of legal conclusions and citations, to which no  
5 response by the County is required. To the extent a response is required, the County  
6 denies the allegations contained in the third and fourth sentences of paragraph 24.  
7 The County denies all other allegations contained in paragraph 24.

8 25. The allegations in paragraph 25 contain legal conclusions and 50 C.F.R.  
9 §§ 17.3 and 222.102 and 64 Fed. Reg. 60,727 (Nov. 8, 1999) contain the best  
10 evidence of their contents. Therefore, no response by the County is required. To the  
11 extent a response by the County is required, the County admits only that the quoted  
12 language in the first sentence of paragraph 25 appears in 50 C.F.R. §§ 17.3 and  
13 222.102, and that the quoted language in the third sentence of paragraph 25 appears  
14 in 50 C.F.R. § 222.102. The County also admits that the quoted language in the fifth  
15 and seventh sentences of paragraph 25 appears in 64 Fed. Reg. 60,727 (Nov. 8,  
16 1999). The County denies all other allegations contained in paragraph 25.

17 26. The allegations in paragraph 26 contain legal conclusions and 50 C.F.R.  
18 § 17.3 contains the best evidence of its contents. Therefore, no response by the  
19 County is required. To the extent a response by the County is required, the County  
20 admits only that the quoted language in paragraph 26 appears in 50 C.F.R. § 17.3  
21 and that NMFS has not issued a formal rule defining “harass.” The County denies  
22 all other allegations contained in paragraph 26.

23 27. The allegations in paragraph 27 contain legal conclusions and 16 U.S.C.  
24 § 1536 contains the best evidence of its contents. Therefore, no response by the  
25 County is required. To the extent a response by the County is required, the County  
26 admits the allegations in paragraph 27 only to the extent it is consistent with the  
27 language of 16 U.S.C. § 1536. The County denies all other allegations contained in  
28 paragraph 27.

1           28. The allegations in paragraph 28 contain legal argument and conclusions  
2 and 16 U.S.C. § 1540(g)(1) and the case law cited contain the best evidence of their  
3 contents. Therefore, no response by the County is required. To the extent a response  
4 by the County is required, the County admits only that the quoted language in the  
5 first sentence of paragraph 28 appears in 16 U.S.C. § 1540(g)(1), and that the court  
6 in *Marbled Murrelet v. Babbitt*, 83 F.3d 1060, 1068 (9th Cir. 1996) affirmed the  
7 district court's permanent injunction ruling in that case under 16 U.S.C.  
8 § 1540(g)(1). The County denies all other allegations in paragraph 28 including that  
9 *Marbled Murrelet* supports Plaintiffs' assertion that a court may grant preliminary  
10 injunctive relief in this case pursuant to that provision.

11           **B. California Fish and Game Code Section 5937**

12           29. The allegations in paragraph 29 consist entirely of legal argument,  
13 conclusions and citations, to which no response by the County is required. To the  
14 extent a response is required, the County admits only that the quoted language in the  
15 first sentence appears in Cal. Fish & Game Code § 5937 and that the quoted language  
16 in the third sentence appears in *California Trout, Inc. v. Superior Court*, 266 Cal.  
17 Rptr. 788 (Cal. Ct. App. 1990). The County denies all other allegations contained in  
18 paragraph 29.

19           **C. California Fish and Game Section 5901**

20           30. The allegations in paragraph 30 consist entirely of legal conclusions, to  
21 which no response by the County is required. To the extent a response by the County  
22 is required, the County admits only that the quoted language is a partial quote of  
23 language that appears in Cal. Fish & Game Code § 5901. The County denies all other  
24 allegations contained in paragraph 30.

25           **D. The California Public Trust Doctrine**

26           31. The allegations in paragraph 31 consist entirely of legal argument,  
27 conclusions and citations, to which no response by the County is required. To the  
28 extent a response by the County is required, the County admits only that the quoted

1 language in the first sentence appears in *National Audubon Society v. Superior*  
2 *Court*, 33 Cal. 3d 419 (Cal. Ct. App. 1983). The County denies that the quoted  
3 language in the second sentence appears in any of the cases Plaintiffs cite in  
4 paragraph 31. The County denies each and every remaining allegation in paragraph  
5 31.

6 32. The allegations in paragraph 32 consist entirely of legal argument,  
7 conclusions and citations, to which no response by the County is required. To the  
8 extent that a response by the County is required, the County admits only that the  
9 quoted language in the third sentence appears in *National Audubon Society v.*  
10 *Superior Court*, 189 Cal. Rptr. 346 (Cal. Ct. App. 1983). The County denies all  
11 remaining allegations contained in paragraph 32.

12 **E. California Constitution Article X, Section 2**

13 33. Paragraph 33 consists entirely of legal argument, conclusions and  
14 citations, to which no response by the County is required. To the extent a response  
15 is required, the County admits only that the quoted language in the first sentence of  
16 paragraph 33 appears in article X, section 2 of the California constitution, that the  
17 quoted language in the second sentence of paragraph 33 appears in *City of Barstow*  
18 *v. Mojave Water Agency*, 23 Cal. 4th 1224 (2000), and that the quoted language in  
19 the fourth sentence of paragraph 33 appears in *Santa Barbara Channelkeeper v. City*  
20 *of San Buenaventura*, 48 Cal. Rptr. 3d 468 (Cal. Ct. App. 2006). The County denies  
21 all remaining allegations contained in paragraph 33.

22 **F. California Code of Civil Procedure Section 1085**

23 34. Paragraph 34 consists entirely of legal conclusions, and Cal. Code. Civ.  
24 Proc. § 1085 is the best evidence of its contents. Therefore, no response by the  
25 County is required. To the extent a response is required, the County admits only that  
26 the quoted language appears in Cal. Code Civ. Proc. § 1085. The County denies all  
27 remaining allegations contained in paragraph 34.

28

**FACTUAL BACKGROUND**

**A. The County's Diversions and Operations of the Project**

35. Consistent with its answer to paragraph 1, the County admits to Plaintiffs' characterization of the "Project" as set forth in paragraph 35 only to the extent it consists of "Lopez Dam, a three-mile 20-inch diameter buried steel transmission line for conveyance of raw water to the Lopez Terminal Reservoir and subsequently to Lopez Water Treatment Plant, [and] the Lopez Water Treatment Plant." To the extent that Plaintiffs' characterization of the "Project" includes Lopez Lake and "various in-stream infrastructure downstream of Lopez Dam", the County denies those allegations. The County denies all remaining allegations contained in paragraph 35.

36. The County admits to the allegations in the first sentence of paragraph 36. As for the second sentence of paragraph 36, the County admits that the County or the District stores water behind the dam in Lopez Lake, and otherwise denies the allegations in the second sentence of paragraph 36.

37. The County admits that it or the District operates and maintains Lopez Dam. The remaining allegations contained in paragraph 37 contain legal argument and conclusions to which no response is required.

38. Consistent with its answers to paragraphs 1 and 35, the County denies Plaintiffs' definition of the "Project" as set forth in the Complaint. The County admits only that infrastructure relating to Lopez Dam includes a three-mile 20-inch transmission pipe that conveys water to Terminal Dam, Lopez Reservoir, and Lopez Water Treatment Plant. The County denies all remaining allegations contained in paragraph 38.

39. Consistent with its answers to paragraphs 1, 35 and 38, the County denies Plaintiffs' definition of the "Project" as set forth in the Complaint. The County denies each and every allegation in paragraph 39, except the County admits that infrastructure owned or operated by the County or the District includes the

1 “Biddle Park double arch culvert at the Biddle Park access road crossing over Arroyo  
2 Grande Creek” and the “Arroyo Grande Stream Gage, ID # 8409.” The County  
3 specifically denies that this infrastructure constitutes a “barrier[] to Steelhead  
4 migration” and it denies all remaining allegations contained in paragraph 39.

5 40. Consistent with its answers to paragraphs 1, 35, 38 and 39, the County  
6 denies all allegations in paragraph 40 to the extent they relate to “Project”  
7 infrastructure that is not operated by the County and/or to activities of third parties  
8 over which the County has no control. The County denies the allegations in  
9 paragraph 40, except the County admits that it or the District operates or maintains  
10 Lopez Dam and “the Arroyo Grande Creek stream gaging station,” and that water is  
11 released for various uses.

12 41. Consistent with its answers to paragraphs 1, 35, 38 and 39, the County  
13 denies all allegations contained in paragraph 41 to the extent they relate to “Project”  
14 infrastructure that is not operated and maintained by the County or District. The  
15 County admits the allegations in paragraph 41 only as to the infrastructure that is  
16 operated and maintained by the County or District.

17 **B. The County’s Operation and Maintenance of the Project Harms**  
18 **ESA-Listed Species.**

19 42. The County denies each and every allegation in paragraph 42.

20 43. The allegations contained in paragraph 43 purport to characterize the  
21 contents of a 1994 document, which is the best evidence of its contents. Therefore,  
22 no response by the County is required. To the extent a response is required, the  
23 County admits only that there is a letter dated in January 1994 from Wm. H. L.  
24 Hommedieu to the California State Water Board (“State Board”), and that it alleged  
25 violations of the California Fish & Game Code. The County denies all other  
26 allegations contained in paragraph 43.

27 44. The County denies the allegations in paragraph 44, except that it admits  
28 that a response to the citizen’s complaint was filed on or about June 15, 1994, that it

1 was submitted to the Division of Water Rights, and that it asserted that the County  
2 or District operates Lopez Dam in a manner consistent with all local, state, and  
3 federal law.

4 45. The allegations contained in paragraph 45 purport to characterize a  
5 1994 document, which is the best evidence of its contents. Therefore, no response  
6 by the County is required. To the extent a response is required, the County admits  
7 only that there is a letter dated June 24, 1994 from the California Sportfishing  
8 Protection Alliance to the State Board and that it alleged various violations. The  
9 County denies all other allegations contained in paragraph 45.

10 46. Except that the County admits that the State Board has issued and  
11 extended water rights permits and the permit is currently in effect, the County denies  
12 the allegations contained in paragraph 46 and footnote 2.

13 47. The County denies the allegations in paragraph 47, except that it admits  
14 that a Final Draft Arroyo Grande Creek Habitat Conservation Plan and  
15 Environmental Assessment/Initial Study was completed in 2004.

16 48. The allegations contained in paragraph 48 purport to characterize the  
17 2004 HCP and EA/IS, which is the best evidence of its contents. Therefore, no  
18 response by the County is required. To the extent a response is required, the County  
19 admits the allegations in paragraph 48 to the extent that it is consistent with the  
20 language of the 2004 HCP and EA/IS, and denies as to the remainder.

21 49. The allegations contained in paragraph 49 purport to characterize a  
22 2004 document, which is the best evidence of its contents. Therefore, no response  
23 by the County is required. To the extent a response is required, the County admits  
24 only that NMFS issued a document dated November 25, 2004 titled NMFS  
25 Comments on the Proposed Instream Flow Schedule for Steelhead Trout in Arroyo  
26 Grande Creek Downstream of Lopez Dam ("2004 NMFS Comments"). The County  
27 denies all remaining allegations contained in paragraph 49.

1           50. The County admits that NMFS suggested the development of an  
2 alternative downstream release schedule that would be similar to natural flows, but  
3 denies all other allegations in paragraph 50.

4           51. The allegations in paragraph 51 purport to characterize the 2004 NMFS  
5 Comments, which provides the best evidence of its contents, and therefore no  
6 response by the County is required. To the extent a response is required, the County  
7 admits that NMFS suggested that development of an alternative downstream release  
8 schedule and denies all other allegations contained in paragraph 51.

9           52. The allegations in paragraph 52 purport to characterize the June 27,  
10 2005, FWS Comments on the February 2004 Draft of the Arroyo Grande Creek  
11 Habitat Conservation Plan, San Luis Obispo County, California (“2005 FWS  
12 Comments”). The 2005 FWS Comments provide the best evidence of its contents,  
13 and therefore no response by the County is required. To the extent a response is  
14 required, the County admits that FWS issued a document dated June 27, 2005 titled  
15 FWS Comments on the February 2004 Draft of the Arroyo Grande Creek Habitat  
16 Conservation Plan, San Luis Obispo County, California, and that FWS suggested  
17 that tidewater goby be added. The County denies all remaining allegations contained  
18 in paragraph 52.

19           53. The allegations in paragraph 53 purport to characterize the 2005 FWS  
20 Comments, which provides the best evidence of its contents, and therefore no  
21 response by the County is required. To the extent a response is required, the County  
22 denies the allegations contained in paragraph 53.

23           54. The allegations in paragraph 54 purport to characterize the March 13,  
24 2006, FWS Comments on the July 2005 Draft of the Arroyo Grande Creek Habitat  
25 Conservation Plan, San Luis Obispo County, California (“2006 FWS Comments”),  
26 which provides the best evidence of its contents, and therefore no response by the  
27 County is required. To the extent a response is required, the County admits that FWS  
28

1 submitted the 2006 FWS Comments and that these comments related to the tidewater  
2 goby, and denies all other allegations contained in paragraph 54.

3 55. The allegations in paragraph 55 purport to characterize the June 22,  
4 2023, NMFS Letter to Keith Miller, San Luis Obispo County Department of Public  
5 Works (“2023 NMFS Comments”), which provides the best evidence of its contents,  
6 and therefore no response from the County is required. To the extent that a response  
7 is required, the County admits that some of the comments related to volitional fish  
8 passage and denies all other allegations contained in paragraph 55.

9 56. Consistent with its answers to paragraphs 1, 35 and 38, the County  
10 denies Plaintiffs’ definition of the “Project” as set forth in the Complaint and  
11 referenced in paragraph 56. The County denies the allegations in paragraph 56,  
12 except that the County admits that it does not have a final HCP.

13 **C. South-Central California Steelhead (*Oncorhynchus* [sic] *mykiss*) and**  
14 **the County’s Operations of the Project.**

15 **SCCC Steelhead and the Arroyo Grande Creek**

16 57. The allegations in paragraph 57 consist entirely of legal conclusions, to  
17 which no response by the County is required. To the extent a response is required,  
18 the County admits the allegations in paragraph 57.

19 58. The allegations in paragraph 58 consist entirely of legal conclusions, to  
20 which no response by the County is required. To the extent a response is required,  
21 the County admits the allegations in paragraph 58.

22 59. The allegations in paragraph 59 purport to characterize contents of  
23 multiple documents. The documents are the best evidence of their contents and  
24 therefore no response is required by the County. To the extent a response is required,  
25 the County denies the allegations as stated in paragraph 59.

26 60. Plaintiffs’ allegations contained in paragraph 60 purport to characterize  
27 the contents of the 2017 BiOp. The document is the best evidence of its contents and  
28

1 therefore no response is required by the County. To the extent a response is required,  
2 the County denies the allegations in paragraph 60.

3 61. The allegations in paragraph 61 purport to characterize the contents of  
4 70 Fed. Reg. 52488 (Sept. 2, 2005), which provides the best evidence of its contents.  
5 Therefore no response by the County is required. To the extent a response by the  
6 County is required, the County admits the allegations in paragraph 61 only to the  
7 extent the language in paragraph 61 is consistent with the language of 70 Fed. Reg.  
8 52488 (Sept. 2, 2005), and otherwise denies the allegations in paragraph 61.

9 62. The allegations in paragraph 62 purport to characterize the contents of  
10 62 Fed. Reg. 43942 (Aug. 18, 1997), which provides the best evidence of its  
11 contents. Therefore no response by the County is required. To the extent that a  
12 response by the County is required, the County admits the allegations in paragraph  
13 62 only to the extent the language in paragraph 62 is consistent with 62 Fed. Reg.  
14 43942 (Aug. 18, 1997), and otherwise denies the allegations in paragraph 62.

15 63. The allegations in the first sentence of paragraph 63 cite to the NMFS  
16 West Coast Region, 2023 5-Year Review: Summary & Evaluation of South-Central  
17 California Coast Steelhead, which provides the best evidence of its contents, and  
18 therefore no response by the County is required. The allegations in the third sentence  
19 of paragraph 63 cite to 70 Fed. Reg. 52492, which provides the best evidence of its  
20 contents, and therefore no response by the County is required. To the extent a  
21 response is required, the County admits only that the quoted language in paragraph  
22 63 appears in the respective citations, and otherwise denies the allegations in  
23 paragraph 63.

24 64. The allegations in paragraph 64 purport to characterize 78 Fed. Reg.  
25 77430 (Dec. 23, 2013) and the 2013 SCCC Recovery Plan, each of which provides  
26 the best evidence of its contents, therefore no response by the County is required. To  
27 the extent a response is required, the County denies the allegations as stated in  
28 paragraph 64.

**The County's Operation of the Project Is Harming SCCC Steelhead**  
**The County's Construction, Operation, and Maintenance of the Project**  
**Blocks Access to Valuable SCCC Steelhead Habitat**

65. The allegations in paragraph 65 constitute a legal conclusion, to which no response from the County is required. To the extent a response is required, the County denies the allegations in paragraph 65.

66. The allegations in the first and third sentences of paragraph 66 purport to characterize 70 Fed. Reg. at 52507, which provides the best evidence of its contents. Therefore no response by the County is required. The allegations in the fifth sentence of paragraph 66 purports to characterize the 2023 SCCC Steelhead Species Assessment, which provides the best evidence of its contents. Therefore, no response by the County is required. To the extent a response is required, the County admits only that Steelhead cannot migrate beyond Lopez Dam from Arroyo Grande Creek, but it denies all remaining allegations in paragraph 66.

67. The allegations in paragraph 67 purport to characterize the contents of the 2024 NMFS: Role of Arroyo Grande Creek, which provides the best evidence of its contents. Therefore no response by the County is required. To the extent a response is required, the County admits that Steelhead cannot migrate beyond Lopez Dam from Arroyo Grande Creek, and therefore access to some potential Steelhead spawning and rearing habitat above Lopez Dam and Lopez Lake is blocked. The County also admits that some portion of this potential Steelhead spawning and rearing habitat is located on U.S. Forest Service land within Los Padres National Forest. The County denies all other allegations in paragraph 67.

68. Consistent with its answers to paragraphs 1, 35 and 38, the County denies Plaintiffs' definition of the "Project" as set forth in the Complaint and referenced in paragraph 68. The allegations in paragraph 68 purport to characterize the contents of the 2024 NMFS: Role of Arroyo Grande Creek, which provides the best evidence of its contents. Therefore, no response by the County is required. To

1 the extent a response is required, the County admits only that Steelhead cannot  
2 migrate beyond Lopez Dam from Arroyo Grande Creek, and therefore access to  
3 some potential Steelhead spawning and rearing habitat above Lopez Dam and Lopez  
4 Lake is blocked. The County denies all other allegations in paragraph 68.

5 69. The County denies each and every allegation in paragraph 69.

6 70. The County denies each and every allegation in paragraph 70, except it  
7 admits that Steelhead cannot migrate beyond Lopez Dam from Arroyo Grande  
8 Creek, and therefore access to some potential Steelhead spawning and rearing habitat  
9 above Lopez Dam and Lopez Lake is blocked.

10 71. The County denies each and every allegation in paragraph 71.

11 72. The County denies each and every allegation in paragraph 72.

12 73. To the extent the allegations in paragraph 73 constitute a legal  
13 conclusion, no response from the County is required. To the extent a response is  
14 required, the County denies the allegations in paragraph 73.

15 74. The allegations in paragraph 74 purport to characterize the contents of  
16 the 2017 BiOp, which provides the best evidence of its contents. Therefore, no  
17 response by the County is required. To the extent a response is required, the County  
18 admits that the Steelhead population in Arroyo Grande Creek is designated a “Core-  
19 1 Population,” and that this designation indicates a high priority and is based on a  
20 variety of factors.

21 75. The allegations in paragraph 75 purport to characterize the contents of  
22 2017 BiOp, which provides the best evidence of its contents. Therefore, no response  
23 by the County is required. To the extent a response is required, the County admits  
24 that the Steelhead population extends over a broad and geographically diverse area  
25 and is therefore likely to withstand environmental unpredictability, and otherwise  
26 denies all other allegations in paragraph 75.

27 76. The allegations in paragraph 76 purport to characterize the contents of  
28 the 2017 BiOp, which provides the best evidence of its contents. Therefore no

1 response by the County is required. To the extent a response is required, the County  
2 denies the allegations.

3 77. The allegations in paragraph 77 purport to characterize the contents of  
4 2017 BiOp, which provides the best evidence of its contents. Therefore no response  
5 by the County is required. To the extent a response is required, the County admits  
6 that Steelhead actively spawn and rear in Arroyo Grande Creek, and otherwise  
7 denies all other allegations in paragraph 77.

8 78. The allegations in paragraph 78 purports quote the contents of the 2017  
9 BiOp, which provides the best evidence of its contents. Therefore no response by  
10 the County is required. To the extent a response is required, the County admits only  
11 that the quoted language in paragraph 78 appears in the document.

12 **The County's Operation of the Project Reduces and Alters Flows in Arroyo**  
13 **Grande Creek, Resulting in Harm to Steelhead**

14 79. The County denies the allegations in the first sentence of paragraph 79.  
15 With respect to the second sentence of paragraph 79, consistent with its answer to  
16 paragraphs 1, 35, 38, and 39, the County denies the allegations in the second  
17 sentence to the extent the County does not operate the "Project" as Plaintiffs define  
18 it in the Complaint. Except that the County admits that it or the District's  
19 maintenance and operation of Lopez Dam modifies the timing of water flow released  
20 into Arroyo Grande Creek, the County denies the allegations in the second sentence  
21 of paragraph 79.

22 80. With respect to the first sentence in paragraph 80, the County denies  
23 Plaintiffs' allegations. With respect to the allegations in the third sentence of  
24 paragraph 80, Plaintiffs purport to characterize a portion of NMFS, South-  
25 Central/Southern California Coast Steelhead Recovery Planning Domain, 5-Year  
26 Review: Summary and Evaluation of South-Central California Coast Steelhead  
27 Distinct Population Segment, which provides the best evidence of its contents,  
28 therefore no response from the County is required. To the extent a response is

1 required, the County admits that the document states that Steelhead recovery  
2 depends on addressing the most fundamental threats and that it mentions flow  
3 patterns in Arroyo Grande Creek, and denies all other allegations in paragraph 80.

4 81. The allegations in paragraph 81 purport to characterize the 2004 NMFS  
5 Comments, and the 2004 NMFS Comments contain the best evidence of its contents,  
6 therefore no response from the County is required. To the extent a response from the  
7 County is required, the County denies the allegations in paragraph 81.

8 82. The allegations in paragraph 82 purport to characterize the 2004 NMFS  
9 Comments, and the 2004 NMFS Comments contain the best evidence of its contents,  
10 therefore no response from the County is required. To the extent a response from the  
11 County is required, the County denies the allegations in paragraph 82.

12 83. The County denies the allegations in paragraph 83, except that it admits  
13 that the 2007 IDRS provides the current plan for managing downstream releases  
14 from Lopez Dam.

15 84. Except that the County admits that the 2007 IDRS is meant to be an  
16 interim document to manage releases from Lopez Dam until an HCP is approved,  
17 and that the 2007 IDRS continues to be utilized, the County denies all other  
18 allegations in paragraph 84.

19 85. The County admits the first sentence in paragraph 85. The County  
20 denies the second sentence in paragraph 85, as the 2007 IDRS establishes minimums  
21 which can be exceeded based on a variety of factors.

22 86. The County denies the allegations in paragraph 86, as the average  
23 release varies based on a number of factors, and the average release for a specific  
24 period of time may be more than or less than 5 cfs.

25 87. Except that the County admits that the 2007 IDRS includes a Low  
26 Reservoir Response Plan that could support the reduction of downstream release  
27 flows when the amount of water in Lopez Reservoir drops below 20,000 Acre Feet  
28

1 and the County's Board of Supervisors declares an emergency, the County denies  
2 all other allegations in paragraph 87.

3 88. The County denies each and every allegation in paragraph 88.

4 89. The County denies each and every allegation in paragraph 89, except  
5 that the County does admit that operation and maintenance of Lopez Dam does  
6 modify the timing of water flow released into Arroyo Grande Creek.

7 90. The allegations in paragraph 90 purport to quote the contents of the  
8 2017 BiOp, which provides the best evidence of its contents. Therefore, no response  
9 by the County is required. To the extent a response is required, the allegations in  
10 paragraph 90 are denied.

11 91. The County denies the allegations in paragraph 91.

12 92. The County denies the allegations in paragraph 92.

13 93. The allegations in paragraph 93 purport to quote the contents of the  
14 2004 HCP, which provides the best evidence of its contents. Therefore, no response  
15 by the County is required. To the extent a response is required, the County admits  
16 that the document stated, in part, that some activities discussed in the 2004 HCP  
17 could potentially result in "take" of ESA-listed species or affect the quality and  
18 availability of Steelhead habitat. All other allegations in paragraph 93 are denied.

19 94. The County denies the allegations in paragraph 94.

20 95. The County denies the allegations in paragraph 95.

21 96. The County denies the allegations in paragraph 96.

22 97. The County denies the allegations in paragraph 97.

23 98. The County denies the allegations in paragraph 98.

24 99. The County denies the allegations in paragraph 99.

25 100. The County denies the allegations in paragraph 100.

26 101. The County denies the allegations in paragraph 101.

27 102. The County denies the allegations in paragraph 102.

28 103. The County denies the allegations in paragraph 103.

1 104. The County denies the allegations in paragraph 104.

2 105. The County denies the allegations in the first sentence of paragraph  
3 105. The County denies the allegations in the second sentence of paragraph 105,  
4 except that the County admits that large wood debris has the potential to provide  
5 places for Steelhead to hide from predators, rest and seek refuge, and to build redds  
6 (egg nests).

7 106. The County denies the allegations in paragraph 106.

8 107. The County denies the allegations in paragraph 107.

9 108. To the extent the allegations in paragraph 108 constitute a legal  
10 conclusion, no response from the County is required. To the extent a response is  
11 required, the County denies the allegations in paragraph 108.

12 **Predatory Fish in Lopez Lake and Failure to Screen Fish Spills to Arroyo**  
13 **Grande Creek Harms Steelhead**

14 109. The County denies the allegations in paragraph 109.

15 110. The County denies the allegations in paragraph 110.

16 111. With respect to the first sentence in paragraph 111, the County admits  
17 only that there is not a fish screen spanning the entire spillway at Lopez Dam. The  
18 County avers that a fish screen is located downstream of the outlet control at Lopez  
19 Dam, and at the base of the spillway there is a flipbucket that traps fish from entering  
20 Arroyo Grande Creek during low flow spills. The County denies all other allegations  
21 contained in the first sentence of paragraph 111. To the extent the allegations in the  
22 second sentence of paragraph 111 are legal conclusions, no response from the  
23 County is required. To the extent a response is required, the County denies the  
24 allegations in the second sentence of paragraph 111.

25 **The County's Operation and Maintenance of Other Infrastructure Within**  
26 **Arroyo Grande Creek Harms SCCC Steelhead**

27 112. The County denies the allegations in paragraph 112, except the County  
28 admits that of the infrastructure identified in paragraph 39 of the Complaint, the only

1 infrastructure within Arroyo Grande Creek the County or the District operates and  
2 maintains is the “Biddle Park double arch culvert at the Biddle Park access road  
3 crossing over Arroyo Grande Creek” and the “Arroyo Grande Stream Gage, ID  
4 # 8409.”

5 113. The County denies the allegations in paragraph 113, except that it  
6 admits that it or the District has identified potential impediments to Steelhead  
7 passage in Arroyo Grande Creek and that projects have been undertaken to improve  
8 some of these potential impediments.

9 114. The County lacks sufficient information to form a belief as to the truth  
10 or accuracy of the allegations made in the first sentence of paragraph 114, and  
11 therefore denies them on that basis. The County avers that it does not own or control  
12 the “abandoned dam and diversion footings at stream mile 11.22 from the confluence  
13 of the ocean.” With respect to the allegations in the third sentence of paragraph 114,  
14 the County denies all allegations, except the County admits that it or the District  
15 owns and operates the “double arch culvert at the Biddle Park access road crossing  
16 over Arroyo Grande Creek.” The County avers that the double arch culvert at the  
17 Biddle Park access road crossing does not create a barrier to Steelhead.

18 115. The County denies the allegations in the first sentence of paragraph  
19 115. To the extent the allegations in the second sentence of paragraph 115 constitute  
20 legal opinions, no response is required. To the extent a response is required, the  
21 County denies all allegations in the second sentence of paragraph 115.

22 **D. California Red-Legged Frog (*Rana aurora draytonii*) and the**  
23 **County’s Operations of the Project**

24 **California Red Legged Frog and Arroyo Grande Creek**

25 116. In response to the allegations in paragraph 116, 61 Fed. Reg. 25813  
26 provides the best evidence of its contents, and therefore no response by the County  
27 is required. To the extent a response is required, the County admits the allegations  
28 in paragraph 116.

1 117. The allegations in paragraph 117 purport to characterize the 2004 HCP  
2 and May 2017, Bridge Street Bridge Rehabilitation Project Biological Assessment.  
3 These documents are the best evidence of their contents. Therefore, no response to  
4 paragraph 117 is required. To the extent that a response is required, the County  
5 admits that at some time CRLF were observed in Arroyo Grande Creek immediately  
6 downstream from the Lopez Dam outlet, and that the 2017 document found that there  
7 was suitable instream aquatic habitat in some area of Arroyo Grande Creek. The  
8 County denies all other allegations in paragraph 117.

9 118. The allegations in paragraph 118 purport to characterize a document,  
10 and that document is the best evidence of its contents. Therefore, no response is  
11 required. To the extent a response is required, the County admits that a 2021 survey  
12 observed CRLF in Arroyo Grande Lagoon. The County denies all other allegations  
13 in paragraph 118.

14 119. The allegations in paragraph 119 consist entirely of references to 61  
15 Fed. Reg. 25813, which provides the best evidence of its contents, and therefore no  
16 response by the County is required. To the extent a response is required, the County  
17 admits only that the referenced excerpts appear in 61 Fed. Reg. 25813 (May 23,  
18 1996), and denies all other allegations in paragraph 119.

19 **The County's Operation of the Project is Harming California Red-Legged**  
20 **Frog**

21 120. The County denies the allegations in paragraph 120. Further, to the  
22 extent the allegations in the second sentence of paragraph 120 references the 2005  
23 FWS Comments, that document provides the best evidence of its contents, and  
24 therefore no response is required.

25 121. The County denies the allegations in paragraph 121.

26 122. The County denies the allegations in the first sentence of paragraph  
27 122. The County admits that the excerpted material in the second sentence of  
28 paragraph 122 appears in 61 Fed. Reg. 25825, which serves as the best evidence of

1 its contents. The County denies all remaining allegations contained in the second  
2 sentence of paragraph 122 and denies the allegations contained in the third sentence  
3 of paragraph 122.

4 123. The County denies the allegations in paragraph 123.

5 124. To the extent the allegations in the first four sentences of paragraph 124  
6 reference 61 Fed. Reg. 25814, that document contains the best evidence of its  
7 contents, and therefore no response by the County is required. To the extent a  
8 response is required, the County admits only that the referenced excerpts appear in  
9 61 Fed. Reg. 25814, and otherwise denies the allegations. With respect to the fifth  
10 and seventh sentences of paragraph 124, the County denies all allegations. The  
11 County also denies that the allegations in the fifth and seventh sentences of  
12 paragraph 124 are found in 61 Fed. Reg. 25814, as Plaintiffs allege.

13 125. The allegations in paragraph 125 consist entirely of references to the  
14 July 21, 2021, California State Parks, Aquatic Survey Report for Arroyo Grande,  
15 Meadow, Pismo, and Carpenter Creek Lagoons (Reference Permit #TE-101154-3),  
16 which provides the best evidence of its contents, and therefore no response by the  
17 County is required. To the extent a response is required, the County lacks sufficient  
18 information to form a belief as to the truth or accuracy of the allegations in paragraph  
19 125, and therefore denies the allegations on that basis.

20 126. The allegations in paragraph 126 consist entirely of references to the  
21 Oct. 28, 2021, California State Parks, Aquatic Survey Report for Arroyo Grande,  
22 Oso Flaco, Pismo, and Carpenter Creek Lagoons (Reference Permit #TE-101154-  
23 3), which provides the best evidence of its contents, and therefore no response by  
24 the County is required. To the extent a response is required, the County lacks  
25 sufficient information to form a belief as to the truth or accuracy of the allegations  
26 in paragraph 126, and therefore denies the allegations on that basis.

27 127. The County denies the allegations in paragraph 127.

28 128. The County denies the allegations in paragraph 128.

1           129. The County denies the allegations in paragraph 129.

2           130. The County denies the allegations in paragraph 130.

3           131. To the extent the allegations in the first sentence of paragraph 131  
4 reference the 2004 HCP and EA/IS, that document serves as the best evidence of its  
5 contents, and therefore no response from the County is required. To the extent that  
6 a response is required, the County admits that at some point in time bullfrogs were  
7 observed as the base of Lopez Dam in areas that might also provide habitat for  
8 CRLF, and otherwise denies all allegations in the first sentence of paragraph 131.  
9 The County denies the allegations in the third sentence in paragraph 131.

10           132. To the extent the allegations in paragraph 132 reference 61 Fed. Reg.  
11 25825 and 2004 HCP and EA/IS, those documents provide the best evidence of their  
12 contents, and therefore no response from the County is required. To the extent a  
13 response is required, the County admits only that the referenced language in  
14 paragraph 132 appears in 61 Fed. Reg. at 25,825 and the 2004 HCP and EA/IS,  
15 respectively. The County denies all other allegations contained in paragraph 132.

16           133. To the extent the allegations in paragraph 133 are legal conclusions, no  
17 response is required. To the extent a response is required, the County denies the  
18 allegations in paragraph 133.

19           134. With respect to the first sentence of paragraph 134, the County admits  
20 that it or the District has at some point in time and at some location in or near Arroyo  
21 Grande Creek, removed vegetation, sprayed herbicide, shaped banks to control  
22 erosion, and/or conducted desilting activities. The County denies all other  
23 allegations in the first sentence of paragraph 134. With respect to the third sentence  
24 of paragraph 134, the County denies the allegations. With respect to the fifth and  
25 sixth sentences of paragraph 134, the County denies the allegations.

26           135. With respect to the first sentence of paragraph 135, the County admits  
27 only that Arroyo Grande Creek is listed as one of the areas for California red-legged  
28 frog recovery efforts by the U.S. Fish and Wildlife Service, and denies all other

1 allegations in that sentence. With respect to the third sentence of paragraph 135, the  
2 FWS, Recovery Plan for the California Red-legged Frog is the best evidence of its  
3 contents, and therefore no response from the County is required. To the extent that  
4 a response is required, the County admits that at some point in time CRLF have been  
5 observed in Arroyo Grande Lagoon and some portions of Arroyo Grande Creek. The  
6 County otherwise denies all allegations in the third sentence of paragraph 135. With  
7 respect to the fifth sentence of paragraph 135, the County denies these allegations.

8 **E. Tidewater Goby (*Eucyclogobius newberryi*) and the County's**  
9 **Operations of the Project**

10 **Tidewater Goby and Arroyo Grande Creek**

11 136. To the extent the allegations in paragraph 136 include references to 59  
12 Fed. Reg. 5494 (Mar. 7, 1994), that document provides the best evidence of its  
13 contents, and therefore no response by the County is required. To the extent a  
14 response is required, the County admits that the referenced excerpts in paragraph  
15 136 appear in 59 Fed. Reg. 5494, and otherwise denies the allegations.

16 137. The allegations in paragraph 137 consist entirely of references to 59  
17 Fed. Reg. 5494, which is the best evidence of its contents, and therefore no response  
18 from the County is required. To the extent a response is required, the County admits  
19 only that the referenced excerpts in paragraph 137 appear in 59 Fed. Reg. 5494, and  
20 otherwise denies the allegations.

21 138. The allegations in paragraph 138 consist entirely of references to 59  
22 Fed. Reg. 5495, which is the best evidence of its contents, and therefore no response  
23 from the County is required. To the extent a response is required, the County admits  
24 only that the referenced excerpts in paragraph 138 appear in 59 Fed. Reg. 5495, and  
25 otherwise denies the allegations.

26 139. The allegations in paragraph 139 consist entirely of references to 59  
27 Fed. Reg. 5494, which is the best evidence of its contents, and therefore no response  
28 from the County is required. To the extent a response is required, the County admits

1 only that the referenced excerpts in paragraph 139 appear in 59 Fed. Reg. 5494, and  
2 otherwise denies the allegations.

3 140. The allegations in paragraph 140 consist entirely of references to 59  
4 Fed. Reg. 5494, which is the best evidence of its contents, and therefore no response  
5 from the County is required. To the extent a response is required, the County admits  
6 only that the referenced excerpts in paragraph 140 appear in 59 Fed. Reg. 5494, and  
7 otherwise denies the allegations.

8 141. The allegations in paragraph 141 consist entirely of references to 59  
9 Fed. Reg. 5494, which is the best evidence of its contents, and therefore no response  
10 from the County is required. To the extent a response is required, the County admits  
11 only that the referenced excerpts in paragraph 141 appear in 59 Fed. Reg. 5494, and  
12 otherwise denies the allegations.

13 142. The allegations in paragraph 142 consist entirely of references to 59  
14 Fed. Reg. 5494, which is the best evidence of its contents, and therefore no response  
15 from the County is required. To the extent a response is required, the County admits  
16 only that the referenced excerpts in paragraph 142 appear in 59 Fed. Reg. 5494, and  
17 otherwise denies the allegations.

18 143. The allegations in paragraph 143 consist entirely of references to  
19 external documents, which are the best evidence of their contents, and therefore no  
20 response from the County is required. To the extent a response is required, the  
21 County admits that tidewater gobies have been present in Arroyo Grande Lagoon  
22 and certain portions of Arroyo Grande Creek at some point in time, and otherwise  
23 denies the allegations.

24 **The County's Operation of the Project is Harming Tidewater Goby**

25 144. To the extent the first sentence in paragraph 144 includes a legal  
26 conclusion, no response from the County is required. To the extent a response is  
27 required, the County denies all allegations in the first sentence. The County denies  
28 the allegations in the second sentence of paragraph 144.

1           145. The County denies the allegations in the first sentence of paragraph 145  
2 and denies that the first sentence of paragraph 145 is supported by 59 Fed. Reg.  
3 5495, which Plaintiffs reference in the second sentence of paragraph 145. The  
4 County denies the allegations in the remainder of paragraph 145.

5           146. With respect to the first sentence of paragraph 146, Plaintiffs'  
6 allegations reference the 2013 SCCC Recovery Plan at 4-9, which is the best  
7 evidence of its contents, and therefore no response from the County is required. To  
8 the extent a response from the County is required, the County avers that the 2013  
9 SCCC Recovery Plan at 4-9 makes no reference to tidewater goby habitat, and  
10 therefore denies the allegations in the first sentence of paragraph 146. With respect  
11 to the third sentence of paragraph 146, the allegations reference 59 Fed. Reg. 5496,  
12 which is the best evidence of its contents, and therefore no response by the County  
13 is required. To the extent a response is required, the County admits only that the  
14 referenced excerpts in the third sentence of paragraph 146 appear in 59 Fed. Reg.  
15 5496, and otherwise denies the allegations.

16           147. The County denies the allegations in the first sentence of paragraph  
17 147. The allegations in the second sentence of paragraph 147 reference, in their  
18 entirety, the FWS, Comments on the February 2004 Draft of the Arroyo Grande  
19 Creek Habitat Conservation Plan, San Luis Obispo County, California (June 2005),  
20 which is the best evidence of its contents, and therefore no response by the County  
21 is required. To the extent a response is required, the County admits that in the  
22 summer of 2004 certain portions of Arroyo Grande Creek were dry for some period  
23 of time, and otherwise denies the allegations in paragraph 147.

24           148. The allegations in paragraph 148 consist entirely of references to  
25 external references, which provide the best evidence of their contents, and therefore  
26 no response by the County is required. To the extent a response is required, the  
27 County admits that in the past certain portions of Arroyo Grande Creek were dry for  
28 some period of time, and otherwise denies the allegations in paragraph 148.

1 149. The County denies the allegations in paragraph 149.

2 150. The County denies the allegations in paragraph 150.

3 151. The County denies the allegations in paragraph 151.

4 152. The County denies the allegations in the first sentence of paragraph  
5 152. The allegations in the third sentence of paragraph 152 reference 59 Fed. Reg.  
6 5496, which is the best evidence of its contents, and therefore no response from the  
7 County is required. To the extent a response is required, the County admits only that  
8 the referenced language in the third sentence appears in 59 Fed. Reg. 5496, and  
9 otherwise denies the allegations.

10 153. The County denies the allegations in paragraph 153.

11 154. The County denies the allegations in paragraph 154.

12 155. The allegations in paragraph 155, in their entirety, reference July 21,  
13 2021, California State Parks, Aquatic Survey Report for Arroyo Grande, Meadow,  
14 Pismo, and Carpenter Creek Lagoons (Reference Permit #TE-101154-3), which is  
15 the best evidence of its contents, therefore no response from the County is required.  
16 To the extent a response is required, the County admits that in 2021 someone  
17 recommended that resource managers and other stakeholders increase engagement  
18 on local water management issues, and otherwise denies the allegations in paragraph  
19 155.

20 156. The allegations in paragraph 156, in their entirety, reference Feb. 25,  
21 2022, California State Parks, Aquatic Survey Report for Arroyo Grande, Oso Flaco,  
22 Pismo, and Carpenter Creek Lagoons (Reference Permit #TE-101154-3), which is  
23 the best evidence of its contents, therefore no response from the County is required.  
24 To the extent a response is required, the County admits that in 2022 someone  
25 recommended that resource managers and other stakeholders increase engagement  
26 on local water management issues, and otherwise denies the allegations in paragraph  
27 156.

28

1           157. The allegations in paragraph 157, in their entirety, reference Feb. 25,  
2 2022, California State Parks, Aquatic Survey Report for Arroyo Grande, Oso Flaco,  
3 Pismo, and Carpenter Creek Lagoons (Reference Permit #TE-101154-3), which is  
4 the best evidence of its contents, therefore no response from the County is required.  
5 To the extent a response is required, the County admits that the quoted language  
6 appears in the document, and otherwise denies the allegations.

7           158. The allegations in paragraph 158, in their entirety, reference Sept. 28,  
8 2022, California State Parks, Aquatic Survey Report for Arroyo Grande, Oso Flaco,  
9 Pismo, and Carpenter Creek Lagoons (Reference Permit #TE-101154-3), which is  
10 the best evidence of its contents, and therefore no response from the County is  
11 required. To the extent a response is required, the County admits that the quoted  
12 language appears in the document, and otherwise denies the allegations.

13           159. The allegations in paragraph 159, in their entirety, reference Jan. 10,  
14 2023, California State Parks, Aquatic Survey Report for Arroyo Grande, Oso Flaco,  
15 Pismo, and Carpenter Creek Lagoons (Reference Permit #TE- 101154-3), which is  
16 the best evidence of its contents, and therefore no response from the County is  
17 required. To the extent a response is required, the County admits that the quoted  
18 language appears in the document, and otherwise denies the allegations.

19           160. The County denies the allegations in paragraph 160.

20           **F. Least Bell's Vireo (*Vireo bellii pusillus*) and the County's Operation**  
21           **of the Project.**

22                       **Least Bell's Vireo and Arroyo Grande Creek**

23           161. To the extent the allegations in paragraph 161 reference 51 Fed. Reg.  
24 16474 (May 2, 1986), that document provides the best evidence of its contents,  
25 therefore no response from the County is required. To the extent a response is  
26 required, the County admits only that the referenced excerpts in the first and third  
27 sentences appear in 51 Fed. Reg. 16474, and the County denies that the referenced  
28

1 excerpt in the fifth sentence appears in 51 Fed. Reg. 16474. The County otherwise  
2 denies the allegations.

3 162. With respect to the first sentence in paragraph 162, the County admits  
4 that many Vireo build nests in willows, and otherwise denies the allegations in the  
5 first sentence. To the extent the allegations in the third sentence of paragraph 162  
6 refer to FWS, 1998 Draft Recovery Plan for the Least Bell's Vireo, that document  
7 is the best evidence of its contents, and no response from the County is required. To  
8 the extent a response is required, the County admits that Vireo do not exclusively  
9 build nests in willows, and otherwise denies the allegations in the third sentence. To  
10 the extent the allegations in the fifth sentence of paragraph 162 reference 2014 Lopez  
11 Water Project Habitat Conservation Plan, prepared by H. T. Harvey & Associates  
12 for San Luis Obispo County, that document is the best evidence of its contents, and  
13 therefore no response from the County is required. To the extent a response is  
14 required, the County admits that in 2014 there was suitable nesting habitat for Vireo  
15 but no sitings of Vireo along Arroyo Grande Creek, and otherwise denies the  
16 allegations in the fifth sentence.

17 163. To the extent the allegations in paragraph 163 reference 2014 Lopez  
18 Water Project Habitat Conservation Plan, prepared by H. T. Harvey & Associates  
19 for San Luis Obispo County, that document is the best evidence of its contents, and  
20 therefore no response from the County is required. To the extent a response is  
21 required, the County admits that a Vireo was documented many miles away from  
22 the Arroyo Grande Creek in 2008 or 2009, and otherwise denies the allegations.

23 164. To the extent the allegations in paragraph 164 reference 51 Fed. Reg.  
24 16478, that document is the best evidence of its contents, and therefore no response  
25 from the County is required. To the extent a response is required, the County admits  
26 only that 51 Fed. Reg. 16478 states that threats to the least Bell's vireo includes  
27 riparian habitat destruction, but denies that 51 Fed. Reg. 16478 states that threats to  
28 the least Bell's vireo includes nest survival.

1           165. To the extent the allegations in paragraph 165 reference 51 Fed. Reg.  
2 16474, that document is the best evidence of its contents, and therefore no response  
3 from the County is required. To the extent a response is required, the County admits  
4 only that the excerpted language in paragraph 165 appears in 51 Fed. Reg. 16474,  
5 16478, and otherwise denies the allegations.

6           166. The County lacks sufficient information to form a belief as to the truth  
7 or accuracy of the allegations in paragraph 163, and therefore denies the allegations  
8 on that basis. The County denies that the referenced language in paragraph 166  
9 appears in “*Id.* at 4” as Plaintiffs allege in the second sentence of paragraph.

10           **The County’s Operation of the Project is Harming Least Bell’s Vireo**

11           167. The County denies the allegations in paragraph 167.

12           168. The County denies the allegations in paragraph 168.

13           169. To the extent the allegations in paragraph 169 reference external  
14 sources, those sources are the best evidence of their contents, and therefore no  
15 response is required. To the extent a response is required, the County denies the  
16 allegations.

17           170. To the extent that the allegations in paragraph 170 refer to external  
18 sources, those sources are the best evidence of their contents, and therefore no  
19 response from the County is required. To the extent a response is required, the  
20 County admits Vireo can occur in a variety of riparian habitat types, and otherwise  
21 denies the allegations.

22           171. The County denies the allegations in paragraph 171.

23           172. The County denies the allegations in paragraph 172.

24           173. The County denies the allegations in paragraph 173.

**G. Southwestern Pond Turtle (*Actinemys pallida*) and the County's Operations of the Project**

**Southwestern Pond Turtle and the Arroyo Grande Creek**

174. To the extent the allegations in paragraph 174 reference 88 Fed. Reg. 68370 (Oct. 3, 2024) and 89 Fed. Reg. 23534 (Apr. 4, 2024), those documents are the best evidence of their contents, therefore no response from the County is required. To the extent a response is required, the County admits the allegations in paragraph 174.

175. To the extent the allegations in paragraph 175 reference 89 Fed. Reg. 23534, that documents is the best evidence of its contents, therefore no response from the County is required. To the extent a response is required, the County admits the allegations in paragraph 175.

176. The allegations in paragraph 176 reference a County of San Luis Obispo (Oct. 2010), Arroyo Grande Creek Channel Waterway Management Program Final Environmental Impact Report, SCH No. 2009061030, which is the best evidence of its contents, and therefore no response by the County is required. To the extent a response is required, the County admits that Southwestern pond turtles may inhabit certain streams that contain pools from 3 to 5.2 feet deep at some point in time, and otherwise denies the allegations.

177. The allegations in paragraph 177 reference 88 Fed. Reg. 68376, which is the best evidence of its contents, and therefore no response from the County is required. To the extent a response is required, the County admits that the referenced language in paragraph 177 appears in 88 Fed. Reg. 68376, and otherwise denies the allegations.

178. The allegations in paragraph 178 reference 88 Fed. Reg. 68378, which is the best evidence of its contents, and therefore no response from the County is required. To the extent a response is required, the County admits that the referenced

1 language in paragraph 178 appears in 88 Fed. Reg. 68378, and otherwise denies the  
2 allegations.

3 179. The allegations in paragraph 179 consist entirely of references to 88  
4 Fed. Reg. 68378, which is the best evidence of its contents, and therefore no response  
5 from the County is required. To the extent a response is required, the County admits  
6 that the referenced language in paragraph 179 appears in 88 Fed. Reg. 68378, and  
7 otherwise denies the allegations.

8 180. The allegations in paragraph 180 consist entirely of references to 88  
9 Fed. Reg. 68378, which is the best evidence of its contents, and therefore no response  
10 from the County is required. To the extent a response is required, the County admits  
11 that the referenced language in paragraph 180 appears in 88 Fed. Reg. 68378, and  
12 otherwise denies the allegations.

13 181. To the extent the allegations in paragraph 181 reference Arroyo Grande  
14 Creek WMP 2010 EIR, that document is the best evidence of its contents, and  
15 therefore no response by the County is required. To the extent a response is required,  
16 the County admits that at some point in time the Southwestern pond turtle inhabited  
17 some portion of Arroyo Grande Creek, and otherwise denies the allegations in the  
18 first sentence. With regards to the third sentence of paragraph 181, the County admits  
19 only that southwestern pond turtles have utilized instream and open water habitat of  
20 Arroyo Grande Creek at some point in time, and otherwise denies the allegations in  
21 the third sentence.

22 **The County's Operation of the Project is Harming Southwestern Pond Turtle**

23 182. The County denies the allegations in paragraph 182.

24 183. The County denies the allegations in paragraph 183.

25 184. The County denies the allegations in paragraph 184.

26 185. The County denies the allegations in paragraph 185.

27 186. The County denies the allegations in paragraph 186.

1           187. Paragraph 187 is a request for relief to which no response is required.  
2 To the extent a response is required, the County denies that Plaintiffs are entitled to  
3 any relief whatsoever.

4                                   **FIRST CLAIM FOR RELIEF**

5           **Violation of ESA Section 9 – Prohibition Against Unauthorized Take of**  
6           **Steelhead 16 U.S.C. § 1538; Request for Declaratory Relief and Injunction to**  
7           **Enjoin County from Taking Steelhead**

8           188. In response to paragraph 188, the County restates, realleges, and  
9 incorporates its responses to paragraphs 1 through 187 above, as if fully stated  
10 herein.

11           189. Paragraph 189 consists entirely of legal conclusions to which no  
12 response is required. To the extent a response is required, the County denies such  
13 allegations in their entirety.

14                                   **SECOND CLAIM FOR RELIEF**

15           **Violation of California Fish and Game Code § 5937 Associated with Harm to**  
16           **Steelhead, Pursuant to California Code of Civil Procedure § 1085**

17           190. In response to paragraph 190, the County restates, realleges, and  
18 incorporates its responses to paragraphs 1 through 189, as if fully stated herein.

19           191. Paragraph 191 consists entirely of legal conclusions to which no  
20 response is required. To the extent a response is required, the County admits that it  
21 has a duty under Cal. Fish & Game Code § 5937 to the extent that it applies, but  
22 denies that such duty is as Plaintiffs characterize, and denies all allegations in the  
23 second sentence of paragraph 191.

24           ///

**THIRD CLAIM FOR RELIEF**

**Violation of California Fish and Game Code § 5901 Associated with Harm to Steelhead, Pursuant to California Code of Civil Procedure § 1085**

192. In response to paragraph 192, the County restates, realleges, and incorporates its responses to paragraphs 1 through 191 above, as if fully stated herein.

193. Paragraph 193 consists entirely of legal conclusions to which no response is required. To the extent a response is required, the County admits that it has a duty under Cal. Fish & Game Code § 5901 to the extent that it applies, but denies that such duty is as Plaintiffs characterize, and denies all allegations in the second sentence of paragraph 193.

**FOURTH CLAIM FOR RELIEF**

**Violation of the California Public Trust Doctrine, Pursuant to California Code of Civil Procedure § 1085**

194. In response to paragraph 194, the County restates, realleges, and incorporates its responses to paragraphs 1 through 193 above, as if fully stated herein.

195. Paragraph 195 consists entirely of legal conclusions to which no response is required. To the extent a response is required, the County admits that it has a duty under the California public trust doctrine to the extent that it applies, and denies all other allegations in paragraph 195.

**FIFTH CLAIM FOR RELIEF**

**Violation of California Constitution Article X, Section 2 Due to Harm to the Arroyo Grande Creek Environment, Pursuant to California Code of Civil Procedure § 1085**

196. In response to paragraph 196, the County restates, realleges, and incorporates all applicable responses above, as if fully stated herein.

1           197. Paragraph 197 consists entirely of legal conclusions to which no  
2 response is required. To the extent a response is required, the County admits that it  
3 has a duty under California constitution article X, section 2 to the extent that it  
4 applies, and otherwise denies the allegations in paragraph 197.

5                                   **REMEDY**

6           198. Paragraph 198 consists entirely of legal conclusions to which no  
7 response is required. To the extent a response is required, the County denies that  
8 Plaintiff is entitled to any remedy or relief whatsoever.

9                                   **PRAYER FOR RELIEF**

10          The remaining allegations are requests for relief to which no response is  
11 required. To the extent a response is required, the County denies that Plaintiffs are  
12 entitled to the relief requested or to any relief whatsoever.

13                                   **GENERAL DENIAL**

14          The County denies each and every allegation in the Complaint that has not  
15 been otherwise expressly admitted, qualified, or denied.

16                                   **AFFIRMATIVE DEFENSES**

17                                   **First Affirmative Defense**

18                                   *(Statute of Limitations)*

19          Plaintiffs are barred from recovery sought in their Complaint by operation of  
20 the applicable statute of limitations. To the extent Plaintiffs rely on past harm to  
21 Steelhead to establish a violation of Section 9 of the ESA (First Claim for Relief),  
22 and that past harm occurred beyond the operative statute of limitations, Plaintiffs'  
23 claim is barred. *All. for the Wild Rockies v. U.S. Dep't of Agric.*, 772 F.3d 592 (9th  
24 Cir. 2014); *Ctr. for Biological Diversity v. EPA*, 847 F.3d 1075, 1087 (9th Cir. 2017).  
25 With respect to the statutory claims under California state law (Second and Third  
26 Claims for Relief), to the extent that Plaintiffs allege violations that occurred beyond  
27 the three-year general statute of limitations, Plaintiffs claims are time-barred. Cal.  
28 Civ. Proc. § 338(a).

1 **Second Affirmative Defense**

2 *(Laches)*

3 Plaintiffs' claims for relief are barred by the doctrine of laches. Lopez Dam  
4 was constructed in 1968, and the County's operative IDRS was first implemented in  
5 2007. To the extent Plaintiffs argue that Lopez Dam acts as a complete barrier to  
6 Steelhead migration or habitat and therefore "take" of Steelhead is occurring in  
7 violation of Section 9 of the ESA, the Dam has stood for nearly 60 years. Since the  
8 Dam's construction in 1968, the County and its residents have relied on the water in  
9 Lopez Lake for municipal, agricultural, and industrial purposes, along with  
10 groundwater recharge and species habitat. To the extent Plaintiffs argue the IDRS  
11 provides insufficient releases of water for Steelhead, CRLF, tidewater goby, and the  
12 least Bell's vireo, the County, the local municipalities it contracts with, and county  
13 residents have relied on the schedule of water releases in the IDRS for nearly 20  
14 years. Plaintiffs offer no reason for their delay in bringing suit for nearly 20 years  
15 with respect to the implementation of the IDRS and nearly 60 years with respect to  
16 the construction of Lopez Dam. *Apache Survival Coalition v. United States*, 21 F.3d  
17 895, 907 (9th Cir. 1994); *Friends of Yosemite v. Frizzell*, 420 F. Supp. 390, 397  
18 (N.D. Cal. 1976).

19 **Third Affirmative Defense**

20 *(No Private Right of Action)*

21 The Third Claim for Relief is barred against the County in whole or in part to  
22 the extent there is no private right of action under section 5901 of the California Fish  
23 and Game Code. *Noe v. Superior Ct.*, 187 Cal. Rptr. 3d 836, 855–58 (Cal. Ct. App.  
24 2015); *Julian v. Mission Cmty. Hosp.*, 218 Cal. Rptr. 3d 38, 54–56 (Cal. Ct. App.  
25 2017).

26 ///

**Fourth Affirmative Defense**

*(Separation of Powers)*

The remedies sought by Plaintiffs are barred to the extent they violate the separation of powers doctrine or would otherwise require the Court to act as a permitting or regulatory agency. Specifically, Plaintiffs request this Court to issue injunctive relief that would alter the County's water releases related to the Project, which are determined according to the terms of the County's water rights permit, which is within the exclusive jurisdiction of state regulatory agencies. By doing so, the Court would interfere with the essential operations of the state's executive branch, in violation of article III, section 3 of the California constitution. *Butt v. State of California*, 842 P.2d 1240, 1258 (Cal. 1992).

**THE COUNTY'S PRAYER FOR RELIEF**

1. That Plaintiffs take nothing by the Complaint.
2. That this Court enter a judgment dismissing Plaintiffs' Complaint against the County, and all causes of action therein, with prejudice.
3. That this Court award the County the costs of suit incurred herein, including both their costs and attorneys' fees.
4. That this Court award the County such additional and further relief as the Court deems just, equitable, and proper.

Date: November 5, 2024

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ELIZABETH KLEBANER

By: /s/ Benjamin Z. Rubin  
Benjamin Z. Rubin

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COUNTY OF SAN LUIS OBISPO